Supreme Court, U.S.
FILED
AUG 6 1984
ALEXANDER L. STEVAS
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84-199

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM, 1984

No.

RANGELEY A. BROWN, POLLY P. BROWN and McDONALD'S CORPORATION, a Corporation,

Petitioners,

v.

GENERAL ELECTRIC CO., a Corporation, and HOBART CORPORATION, a Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. THE CONSTITUTIONALITY OF NORTH CAROLINA GENERAL STATUTE 1-50(6): DOES SAID STATUTE VIOLATE THE DUE PROCESS GUARANTEES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 18 OF THE NORTH CAROLINA CONSTITUTION; OR VIOLATES THE "OPEN COURT'S" GUARANTEE OF ARTICLE I, SECTION 18 OF THE NORTH CAROLINA CONSTITUTION; OR "THE EQUAL PROTECTION GUARANTEES" OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION?

PARTIES

SUBSIDIARIES OF McDONALD'S CORPORATION,

a Corporation, —

Golden Arch, Inc.
McOpCo Service Company
The Property Place, Inc.
Frank R. Walker Company
McDonald's Business Facilities
Corporation, Inc.
McDonald's Olympic Fund, Inc.
McDonald's Restaurant Operations, Inc.
McDonald's University Realty Corporation
McDonalds of Hawaii Management Corporation
Restaurant Technology, Inc.
McDonald's Restaurants of Alabama, Inc.
Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Illinois
Indiana
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico

New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Hawaii

McDonald's Realty Equities, Inc.
M.D.F. Construction Company
Restaurant Realty Corporation
Adventitious Corporation
Mid Atlantic Adfund, Inc.
Stegar Corporation
McDonald's of Hawaii Development Company
EDT Partnership
Razorback Partnership
SWS Partnership
Laurens Partnership
Newberry Partnership
Michigan Partnership
B & L Partnership
Pelican Partnership

Domestic, With Foreign Branches

McDonald's English Real Estate Co. Ltd.
McDonald's System of Austria, Inc.
McDonald's System of France, Inc.
McDonald's Australian Property Corp.
McDonald's System of Germany, Inc.
McDonald's System of Europe, Inc.
MCD Properties, Inc.

McDonald's Productions, Inc.
Golden Arch Development Corporation
Restaurant Realty Corporation

Foreign
McDonald's in Guam Inc.
McDonald's of Agana-Rte. 4, 6468 Guam, Inc.
McDonald's Restaurants of Canada Ltd.
Read Restaurants Ltd.
Hollmart Family Restaurants Ltd.
J&M Darin Foods Ltd.
Golden Arch Realty Limited
T-Mac Resources Developments Ltd.
Horizons West Developments Ltd.
Adventures West of Alta Lake Ltd.
McDonald's Immobilien CmbH
McDonald's Distribution CmbH
WLS CmbH
McDonald's Promotions CmbH
Anver CmbH
McDonald's CmbH Hamburg
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Berlin
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den Tv-Bereich, Muenchen
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Stuttgart
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Deutschland
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Frankfurt
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Hamburg
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Saarbruecken

Family Food B.V.
McDonald's Advertising Cooperatie, C.A.
McDonald's France, S.A.R.L.
la Paix S.A.
Au Palace S.A.R.L.
McLyon S.A.
McDonald's Restaurants S.A.
Hamacona A.G.
Romac S.A.
McDonald's Gesellschaft mbH
McDonald's Werbegesellshaft
REL Liegenschaftsverwaltugsgesellschaft mbH
McDonald's Restaurants Belgium S.A.
Restaurant and Realty Services (Belgium) N.V.
McDonald's Restaurants Aktiebolag
McDonald's OY
McDonald's Restaurants (Denmark) ApS
McDonald's System of Australia Pty. Ltd.
McDonald's Properties (Australlia) Pty. Ltd.
McDonald's System of Australia Superannuation Fund Pty. Ltd.
McDonald's System of New Zealand, Ltd.
McDonald's Properties, Ltd.
McDonald's Comercio de Allmentos Ltda.
Empresa de Alimentos e Turismo Ltda.
Realco Comercio de Alimentos Ltda.
Restco Comercio de Alimentos Ltd.
McDonald's Finance Company, N.V.
McDonald's Restaurants (Hong Kong) Ltd.
Pinpoint Investments Limited
McDonald's Hamburgers, Ltd.
McDonald's Corp. (South Africa) Pty. Ltd.
McDonald's Golden Arches Restaurant Corporation Sdn. Bhd.
Golden Arches Restaurants Sdn. Bhd.
Wijaya Properties Sdn. Bhd.
Servi-Rapido de Colombia, S.A.
McDonald's Company (Japan) Ltd.
California Family Restaurants, Ltd.
McDonald's Golden Arches Restaurants, Ltd.
McKey Food Service Ltd.
Golden West Foods (1982) Ltd.

McDonald's Restaurants (Singapore) Pte. Ltd.
Restaurantes McDonald's, S.A.
McDonald's Catalonia, S.A.
Golden Arches Development Corp.

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IN THE

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FALL TERM, 1984

No.

RANGELEY A. BROWN, POLLY P. BROWN and McDONALD'S CORPORATION, a Corporation,

Petitioner,

v.

GENERAL ELECTRIC CO., a Corporation, and HOBART CORPORATION, a Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

The Petitioners, RANGELEY A. BROWN, POLLY P. BROWN and McDONALD'S CORPORATION, a Corporation, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered in this proceeding on May 8, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is reproduced in Appendix A to this Petition.

JURISDICTION

The judgment of the Court below (Appendix A, infra, P. 3) was entered on May 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

N.C.G.S. 1-50(6) provides:

> "No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption."

Article I, Section 18 of the North Carolina Constitution provides:

"All Courts shall be open; every person for an injury done him in his land, goods, person or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay."

Article I, Section 19 of the North Carolina Constitution provides:

"No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."

Constitution of the United States, Amendment 14 provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

This claim arose as a result of a fire which occurred on December 12, 1980, at a McDonald's hamburger fast food service store located at 305 South Madison Street, Whiteville, North Carolina. The fire originated in a fryer manufactured by the respondent, General Electric Company, allegedly as a result of defects in the design and construction of the fryer.

The fryer in question had been purchased by McDonald's from an authorized distributor for General Electric Company on or about December 13, 1974. McDonald's initially leased the fryer to Jack W. Crutchman; however, on or about February 1975, McDonald's sold the fryer

to Crutchman. The fryer was initially installed at 305 South Madison Street, in Whiteville, North Carolina, and remained there until the fire occurred in 1980. In May of 1979 Crutchman sold the fryer to the individual petitioners, Rangeley A. Brown and Polly P. Brown. On the date of the fire, McDonald's owned the real property (building) in which the fryer was located and the individual plaintiffs owned the personal property in the building.

Petitioners filed suit in the United States District Court for the Eastern District of North Carolina on December 11, 1981, based on diversity. Initially, petitioners brought suit against both General Electric and Hobart Corporation, the successor in interest to General Electric Company. On January 18, 1982, petitioners dismissed their claims against Hobart without prejudice. On February 9,

1982, after having first received an extension of time in which to respond to the petitioner's complaint, respondent, General Electric Company, filed an answer, generally denying the material allegations of the complaint and setting up various affirmative defenses.

On January 5, 1983, petitioners moved to amend their original complaint by reinstating Hobart Corporation as a party defendant. This motion was allowed by Magistrate Leonard on January 31, 1983. Hobart Corporation thereafter filed an answer and counterclaims on February 22, 1983.

Respondents moved for summary judgment on June 29, 1983. The motion was heard before Judge W. Earl Britt, who pursuant to an Order filed July 12, 1983, granted the respondents' motion for summary judgment and dismissed the case. Petitioners gave Notice of Appeal to the United States

Court of Appeals Fourth Circuit on July 25, 1983.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit Court of Appeals has erroneously upheld a State Statute (North Carolina) which under the facts in this case violates the Fourteenth Amendment of the United States Constitution, Article I, Sections 18 and 19 of the North Carolina Constitution, in that, it abrogates and extinguishes without due process a vested right of the petitioners herein which had accrued prior to the running of the six years encompassed in the State Statute herein involved [N.C.G.S. 1-50(6)] in that said statute has no grace period or savings clause to protect the vested right of the Appellants and therefore is arbitrary, in that, it affords no reasonable time to file a complaint protecting the aforesaid vested right (a claim for

relief as a result of a fire) after said vested right accrued and prior to the running of the six years involved in this particular State Statute and therefore said State Statute is unreasonable, discriminatory, and leaves the ability to file, in this case one day, to chance, thereby dictating that this court declare said statute unconstitutional and remedy the harshness and unfairness of the results herein involved.

CONCLUSION

N.C.G.S. 1-50(6) should be declared unconstitutional.

Respectfully submitted,

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APPENDIX A

OPINION OF COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 83-1685

Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation,

Appellants,

versus

General Electric Company, a corporation and Hobart Corporation, a corporation,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Fayetteville. W. Earl Britt, District Judge. (81-84-CIV-3)

Argued February 9, 1984. Decided May 3, 1984.

Before RUSSELL, WIDENER and PHILLIPS, Circuit Judges.

Henry L. Anderson, Jr. (Anderson, Broadfoot, Anderson, Johnson & Anderson on brief) for Appellants; James G. Billings (Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan on brief) for Appellees.

PER CURIAM:

The plaintiffs in this product liability action appeal from the district court's order granting summary judgment to the defendants. We affirm.

This suit arose as a result of fire at a MacDonald's Restaurant that was operated by Rangeley and Polly Brown, who, along with MacDonald's Corporation, are appellants here. The fire originated in a fryer manufactured by General Electric Co., a defendant below, allegedly as the result of the fryer's defective design and construction. The complaint alleges that General Electric originally sold the fryer to MacDonald's Corp. on December 13, 1974, and that the Browns acquired it in

May of 1979. It is undisputed that the fire occurred on December 12, 1980, and that the plaintiffs filed suit December 11, 1981, almost seven years after the fryer's original sale.

On these alleged facts, the district court granted summary judgment, relying upon the limitations bar of N.C.G.S. Section 1-50(6) which provides:

> "No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption."

Appellants do not contest the district court's holding that the statute's literal terms bar their claim, but challenge the operation of the statute on constitutional grounds. First, they contend that, as applied to them, the statute violates the due process clause of the fourteenth amendment to the United

States Constitution and article I, section 18 of the North Carolina Constitution, in that it unconstitutionally destroys a vested right by barring actions accruing so near to the expiration of the six-year statutory period that filing suit within that period would be effectively impossible. Second, they argue that, on its face, the statute is a violation of the equal protection guarantees of the United States and North Carolina Constitutions in that it makes a number of arbitrary and irrational classifications. Finally, they challenge the statute as a violation of the "open courts" provision of the North Carolina Constitution.

Having considered the briefs and oral arguments, we are persuaded that the district court correctly rejected the appellants' constitutional challenges. We therefore affirm on the reasoning of the

district court. Brown v. General Electric Co., No. 81-84-CIV-3 (E.D.N.C. July 12, 1983).

AFFIRMED.

CERTIFICATE OF SERVICE

I, Henry L. Anderson, Jr., attorney for Petitioners in Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation, vs. General Electric Company, a corporation and Hobart Corporation, a corporation, do hereby certify that I have this date caused to be forwarded three copies of Petition for Writ of Certiorari for Petitioners, Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation, via United States Mail, postage prepaid, to James G. Billings, Counsel for Respondent, Post Office Box 12807, Raleigh, North Carolina, 27605, and to Honorable Rufus Edmiston, Attorney General of North Carolina, Post Office Box 629, Raleigh, North Carolina, 27602.

This 3rd day of August, 1984.

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Office-Supreme Court, U.S.
FILED
SEP 4 1984
ALEXANDER L. STEVAS,
CLERK

NO. 84-199 (2)

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and HOBART CORPORATION, a Corporation,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Whether the petition for writ of certiorari should be denied when the opinions of the Fourth Circuit Court of Appeals and the District Court were correct and fully in accord with precedent of the North Carolina courts and courts of other jurisdictions, and when the statute in question does not violate provisions of either the United States Constitution or the North Carolina Constitution?

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BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

STATEMENT OF THE CASE

This is a products liability action, originally brought in federal court on the basis of diversity jurisdiction, in which the

petitioners seek recovery for property damage and loss of income. The petitioners allege that they suffered damages as the result of a fire which occurred on December 12, 1980 at a McDonald's restaurant and which originated in a fryer manufactured by General Electric Company.

The Complaint alleged that the fryer was initially purchased on or about December 13, 1974. The petitioners filed suit in the present action on December 11, 1981, almost seven years after the initial purchase of the fryer. Therefore, in response to the Complaint, the respondents pled the defense of the statute of limitations provided by the six year statute of repose

contained in N.C.G.S. §1-50(6).

The respondents moved for summary judgment on the basis that the petitioners' claim was effectively barred by the statute of repose. The District Court granted the motion and dismissed the case on July 12, 1983. The petitioners appealed to the United States Court of Appeals for the Fourth Circuit on July 25, 1983 on the grounds that N.C.G.S. §1-50(6) was unconstitutional. The Court of Appeals, in a per curiam opinion filed on May 8, 1984, affirmed the judgment of the District Court and upheld the constitutionality of N.C.G.S. §1-50(6).

This action is governed by N.C.G.S. §1-50(6), therefore, the

only facts relevant to the petitioners' appeal are the date of the initial purchase of the allegedly defective fryer and the date on which the petitioners brought suit. The petitioners allege that the fryer in question was purchased for use by petitioner McDonalds "on or about" December 13, 1974. The petitioners further allege that on December 12, 1980 the fryer malfunctioned and caused a fire which resulted in both property damage and loss of income. Both of these allegations were specifically denied by the respondents.[1] Suit was filed on

---

1 The respondents have evidence, which is controverted by the petitioners, that the date of purchase of the fryer in question was several days earlier than December 13, 1974. If the date of purchase was earlier than December 13, 1974,

December 11, 1981, nearly a year after the fire allegedly occurred. Application of N.C.G.S. §1-50(6) to the facts alleged in the Complaint, therefore, clearly bars the petitioners' action. The applicable six year statute of repose commenced on the date of purchase, which was, at the latest, December 13, 1974, and therefore ran at least by December 13, 1980. The petitioners' suit was not filed until almost a year after the statute had run.

SUMMARY OF ARGUMENT

The North Carolina Supreme Court has upheld the constitution-

---

1 continued.
then the six year period of repose would have expired before the fire occurred and therefore before petitioners' purported claim for relief occurred.

ality of N.C.G.S. §1-50(5), a companion provision to N.C.G.S. §1-50(6), and has indicated in strong dicta that it would uphold the constitutionality of N.C.G.S. §1-50(6). Also, other jurisdictions have upheld the constitutionality of similar statutes of repose against the same contentions as those advanced by the petitioners in this case.

Barring a products liability action not brought within six years from the date of purchase of the product is not arbitrary. Application of N.C.G.S. §1-50(6) did not interfere with a vested right of the petitioners because the petitioners had no cause of action when N.C.G.S. §1-50(6) was enacted.

North Carolina General Statute §1-50(6) does not create any classifications which are not reasonably related to a legitimate legislative purpose and does not bar access to the courts.

ARGUMENT

I. THE OPINIONS OF THE COURTS BELOW WERE CORRECT AND FULLY IN ACCORD WITH PRECEDENT OF THE NORTH CAROLINA COURTS AND THE COURTS OF OTHER JURISDICTIONS

Both the District Court and the Court of Appeals below gave full consideration to the questions now presented by the petitioners and accurately decided that the statute of repose provided in N.C.G.S. §1-50(6) was constitutional. See Brown, et al., v. General Electric,

et al., No. 81-84-CIV-3 (E.D.N.C. July 12, 1983)(App. pp.A-1 - A-4); Brown, et al. v. General Electric, et al., No. 83-1685 (4th Cir. May 8, 1984) (App. pp.A-5 - A-9). The Court of Appeals affirmed the District Court's conclusion that N.C.G.S. §1-50(6) is a statute of repose, does not violate either the United States Constitution or the North Carolina Constitution, and is an absolute bar to recovery under the facts alleged in the Complaint. (App. pp.A-9).

The District Court was persuaded of the constitutionality of N.C.G.S. §1-50(6) by virtue of the North Carolina Supreme Court's decision in the case of Lamb v. Wedgewood South Corp., 308 N.C. 419,

302 S.E.2d 886 (1983). In the Lamb decision, the North Carolina Supreme Court upheld the validity of N.C. G.S. §1-50(5), a companion provision to N.C.G S. §1-50(6), which established a six year statute of repose applicable to action brought against architects and builders and arising out of defective conditions of improvements made to real property. Also, strong dicta of the North Carolina Supreme Court in the case of Bolick v. American Barmag Corp., 306 N.C. 364, 293 S.E.2d 415 (1982) confirmed the District Court's opinion that N.C.G.S. §1-50(6) should be found to be constitutional. The Bolick Court distinguished procedural statutes of limitations from substantive

limitations, or conditions precedent annexed to a right of action created by statute, and noted that "the legislature has created just such a condition precedent in G.S.§1-50(6). 306 N.C. at 370, 293 S.E.2d at 420.

Applying the substantive North Carolina law as enunciated by the North Carolina Supreme Court, the District Court correctly granted summary judgment for the respondents because the action was filed more than six years after the purchase of the product, and was therefore clearly barred by the constitutionally valid statute of repose in N.C.G.S. §1-50(6).

The federal district courts in North Carolina have recognized

N.C.G.S. §1-50(6) as establishing an outside time limit for the bringing of claims based on defective products, and the statute has been applied to bar claims brought outside of the six year period of repose. Tims v. Kerr Lake Country Club, Inc., 82-53-CIV-5, Order on Summary Judgment Motion, (E.D.N.C., July 8, 1983); Bobbitt v. Tannewitz, 538 F.Supp. 654 (M.D.N.C. 1982). Similarly, courts in other jurisdictions, including the Seventh Circuit Court of Appeals, have upheld the constitutionality of statutes of repose such as that provided in N.C.G.S. §1-50(6). Pitts v. Unarco Industries, Inc., 712 F.2d 276 (7th Cir. 1983) cert. denied, ___ U.S. ___, 104 S.Ct. 509

(1983); Adair v. Koppers Co., Inc., 541 F.Supp. 1120 (N.D.Ohio 1982); Mullis v. Southern Co. Services, Inc., 250 Ga. 90, 296 S.E.2d 579 (1982); Twin Falls Clinic & Hospital Building Corp. v. Hamill, 103 Idaho 19, 644 P.2d 341 (1982); Hawkins v. D & J Press Co., Inc., 527 F.Supp. 386 (D.C. Tenn. 1981); O'Brien v. Hazelet & Erdal, 410 Mich. 1, 299 N.W.2d 336 (1980); Burmaster v. Gravity Drainage Dist. No. 2, 366 So.2d 1381 (La.App. 1978); Carter v. Hartenstein, 248 Ark. 1172, 455 S.W.2d 918 (1970), appeal dismissed, 401 U.S. 901 (1971).

In the case of Pitts v. Unarco Industries, Inc., 712 F.2d 276 (7th Cir. 1983) cert. denied, ___ U.S. ___, 104 S.Ct. 509 (1983), the Court

of Appeals for the Seventh Circuit upheld the constitutionality of Indiana's ten year statute of repose for products liability actions against the plaintiffs' contentions that the statute violated both equal protection and due process. The Court of Appeals held that application of the statute did not deprive the plaintiff of due process because her cause of action had not accrued when the statute of repose was enacted, therefore, she had no vested right which the change in the law may have affected. The Court of Appeals also found that the statute complied with equal protection because the classifications created by the statute revealed a "legitimate

legislative purpose." 712 F.2d at 280.

The decision of the District Court and the decision of the Court of Appeals for the Fourth Circuit, affirming the lower court's judgment, fully accord with precedent of the North Carolina courts and of courts in other jurisdictions. Therefore, the petitioners' petition for writ of certiorari should be denied.

II. NORTH CAROLINA GENERAL STATUTE §1-50(6) DOES NOT VIOLATE THE DUE PROCESS OR EQUAL PROTECTION PROVISIONS OF EITHER THE UNITED STATES CONSTITUTION OR THE NORTH CAROLINA CONSTITUTION, NOR DOES THE STATUTE VIOLATE

THE "OPEN COURTS" PROVISION OF THE NORTH CAROLINA CONSTITUTION.

A. The Statute Does Not Violate The Due Process Provisions.

The six year statute of repose provided in N.C.G.S. §1-50(6) is a rational means of achieving the purpose which the Legislature sought of protecting manufacturers from increasing insurance premiums and protecting consumers from the resultant increase in product costs. In enacting N.C.G.S. §1-50(6), the North Carolina Legislature was attempting to avert what it could reasonably determine to be a product liability "crisis." Evidence available to the North Carolina Legislature in 1979 demonstrated that

"increasing jury awards and rising insurance premiums have raised widespread questions about the current operation of product liability law." Foreword to Symposium On Product Liability Law, 56 N.C.L. Rev. 623 (1978).

Barring a products liability action not brought within six years from the date of purchase of the product is not arbitrary. The six year time limit provided by N.C.G.S. §1-50(6) could have reasonably been selected by the North Carolina Legislature based on the available evidence that 97% of all product-related injuries occur within six years of the date of purchase. Model Uniform Product Liability Act, analysis, 44 Fed. Reg. 62,714, 62,733-

734 (1979).

The six year outside time limit for product liability claims provided by N.C.G.S. §1-50(6) is identical to the time limit for claims against architects and builders provided by N.C.G.S. §1-50(5), the constitutionality of which has been upheld. See, Lamb v. Wedgewood South Corp., supra. The six year time limit provided by North Carolina's statute is longer than the period of a statute of repose which has been upheld in at least one other jurisdiction. Carter v. Hartenstein, 248 Ark. 1172, 455 S.W.2d 918 (1970), appeal dismissed, 401 U.S. 901 (1971) (Four year statute of repose for architects and builders held to be

constitutional).

Numerous other jurisdictions have also ruled that statutes of repose, similar to N.C.G.S. §1-50(6), comply with due process. Scalf v. Berkel, Inc., 448 N.E.2d 1201 (Ind. 1983); Hawkins v D & J Press Co., Inc., 527 F.Supp. 386 (D.C. Tenn. 1981); O'Brien v. Hazelet & Erdal, 410 Mich. 1, 299 N.W.2d 336 (1980); Burmaster v. Gravity Drainage Dist. No. 2, 366 So.2d 1381 (La.App. 1978).

The petitioners had no cause of action at the time N.C.G.S. §1-50(6) was enacted, therefore application of the statute interferes with no vested right. The petitioners' argument to the contrary relies on cases in which the courts were con-

cerned with the application of a newly enacted, procedural statute of limitations which, when enacted, affected the plaintiffs' right to bring suit. See Wilson v. Iseminger, 185 U.S. 54 (1902); Flippin v. Jarrell, 301 N.C. 109, 270 S.E.2d 482 (1980); Blevins v. Northwest Carolina Utilities, Inc., 209 N.C. 683, 184 S.E. 517 (1936).

The statute of repose provided in N.C.G.S. §1-50(6) was enacted by the General Assembly of North Carolina in 1979 to become effective October 1, 1979. Products Liability Act, Ch. 654 §§2, 7, 8, 1979 N.C. Sess. Laws 687, 689, 690. In the present case, the petitioners contend that their cause of action arose in 1980. They filed suit in

1981. North Carolina General Statute §1-50(6) was in effect when their cause of action allegedly arose and had been in effect for over two years by the time the suit was filed. These facts do not present a question of the sufficiency of the "grace period" provided before newly enacted legislation is to take effect.

B. The Statute Does Not Violate The Equal Protection Provisions.

Any classifications which N.C.G.S. §1-50(6) may make between manufacturers of products with long lives and manufacturers of products with short lives or between plaintiffs injured immediately prior to and those injured immediately subsequent to the termination of the six

year period of repose are rationally related to the legitimate legislative purpose. See Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976). The classifications of which the petitioners complain were created by the North Carolina Legislature to prevent open-ended liability for manufacturers and to assure the availability of reasonably priced product liability insurance, thus, the distinctions made are reasonably related to the ends the Legislature sought to attain. See Model Uniform Product Liability Act, analysis, 44 Fed. Reg. 62,714, 62, 733 (1979).

Courts in numerous other jurisdictions have held that statutes of repose similar to N.C.G.S. §1-50(6)

do not violate either state or federal equal protection guarantees. Pitts v. Unarco Industries, 712 F.2d 276 (7th Cir. 1983) cert. denied, ___ U.S. ___, 104 S.Ct. 509 (1983); Adair v. Koppers Co., Inc., 541 F.Supp. 1120 (N.D. Ohio 1982); Barnhouse v. City of Pinole, 133 Cal. App.3d 171, 183 Cal.Rptr. 881 (1982); Mullis v. Southern Co. Services, Inc., 250 Ga. 90, 296 S.E.2d 579 (1982); Terry v. New Mexico State Highway Comm., 98 N.M. 119, 645 P.2d 1375 (1982).

C. The Statute Does Not Violate The "Open Courts" Provision Of The North Carolina Constitution.

By setting an outside time limit for the commencement of a products liability action of six

years from the date of initial purchase, the North Carolina Legislature did not bar access to the courts. Confronted with the contention that the statute of repose provided in N.C.G.S. §1-50(5) violated the "open courts" provision of the North Carolina Constitution, the North Carolina Supreme Court upheld the validity of the statute finding that all claims under the statute were not absolutely barred. Lamb v. Wedgewood South Corp., supra. Rather, "[t]he statute's effect is that unless the injury occurs within the six-year period, there is no cognizable claim." 308 N.C. at 444.

Other jurisdictions with state constitution provisions similar to

Art. I, Section 18 of the North Carolina Constitution have upheld statutes of repose similar to that in N.C.G.S. §1-50(6) against the challenge that such a statute of repose violated the state constitution's "open courts" provision. Carney v. Moody, 646 S.W.2d 40 (Ky. 1983); Klein v. Catalano, 386 Mass. 701, 437 N.E.2d 514 (1982); Anderson v. Fred Wagoner and Roy Anderson, Inc., 402 So.2d 320 (Miss. 1981); Freezer Storage, Inc. v. Armstrong Cork Co., 476 Pa. 270, 382 A.2d 715 (1978).

CONCLUSION

For the foregoing reasons, and such other reasons as may be persuasive to the Court, the respondents submit that the petition for

writ of certiorari should be denied.

Respectfully submitted, this the 31 day of August, 1984.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN

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APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

No. 81-84-CIV-3

RANGELEY A. BROWN, et al.,	)	
Plaintiffs,	)	
v.	)	ORDER
GENERAL ELECTRIC COMPANY, a corporation, et al.,	)	
Defendants.	)	

Plaintiffs instituted this action on 11 December 1981 alleging damages to property and loss of income as a result of a fire which occurred on 12 December 1980 and which plaintiffs allege was caused by a defective fryer sold by defendant on 13 December 1974. Defendants have moved for summary

judgment relying on N.C. Gen. Stat. 1-50(6) which provides that

> No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.

Although the North Carolina Supreme Court has yet to address the validity of this section, it has addressed the validity of N.C. Gen. Stat. 1-50(5)a, a companion provision dealing with defective or unsafe conditions resulting from an

improvement to real property, and has found that statute valid. Lamb v. Wedgewood South Corp., No. 156A82 (May 31, 1983). In addition, Bolick v. American Barmag Corp., 306 N.C. 364, 293 S.E.2d 415 (1982), by way of dicta, strongly indicated a similar result for N.C. Gen. Stat. 1-50(6).

Viewing the statute relied upon by defendants to be a statute of repose and an absolute bar to recovery under the facts as stated in the complaint filed herein, the motion of defendants for summary judgment is allowed. See Tims v. Kerr Lake Country Club, Inc., No. 83-53-CIV-5 (E.D.N.C. 8 July 1983).

This action is hereby dismissed.

AND IT IS SO ORDERED.

This 11th day of July, 1983.

/S/ W. Earl Britt
W. EARL BRITT
United States District
Judge

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 83-1685

Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation,

Appellants,

versus

General Electric Company, a corporation and Hobart Corporation, a corporation,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Fayetteville. W. Earl Britt, District Judge. (81-84-CIV-3)

Argued February 9, 1984. Decided May 8, 1984.

Before RUSSELL, WIDENER and PHILLIPS, Circuit Judges.

Henry L. Anderson, Jr. (Anderson, Broadfoot, Anderson, Johnson & Anderson on brief) for Appellants; James G. Billings (Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan on brief) for Appellees.

PER CURIAM:

The plaintiffs in this product liability action appeal from the district court's order granting summary judgment to the defendants. We affirm.

This suit arose as a result of fire at a McDonald's Restaurant that was operated by Rangeley and Polly Brown, who, along with McDonald's Corporation, are appellants here. The fire originated in a fryer manufactured by General Electric Co., a defendant below, allegedly as the result of the fryer's defective design and construction. The

complaint alleges that General Electric originally sold the fryer to McDonald's Corp. on December 13, 1974, and that the Browns acquired it in May of 1979. It is undisputed that the fire occurred on December 12, 1980, and that the plaintiffs filed suit December 11, 1981, almost seven years after the fryer's original sale.

On these alleged facts, the district court granted summary judgment, relying upon the limitations bar of N.C.G.S. Section 1-50(6) which provides:

> "No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after

> the date of initial purchase for use or consumption."

Appellants do not contest the district court's holding that the statute's literal terms bar their claim, but challenge the operation of the statute on constitutional grounds. First, they contend that, as applied to them, the statute violates the due process clause of the fourteenth amendment to the United States Constitution and article I, section 18 of the North Carolina Constitution, in that it unconstitutionally destroys a vested right by barring actions accruing so near to the expiration of the six-year statutory period that filing suit within that period would be effectively impossible. Second,

they argue that, on its face, the statute is a violation of the equal protection guarantees of the United States and North Carolina Constitutions in that it makes a number of arbitrary and irrational classifications. Finally, they challenge the statute as a violation of the "open courts" provision of the North Carolina Constitution.

Having considered the briefs and oral arguments, we are persuaded that the district court correctly rejected the appellants' constitutional challenges. We therefore affirm on the reasoning of the district court. Brown v. General Electric Co., No. 81-84-CIV-3 (E.D.N.C. July 12, 1983).

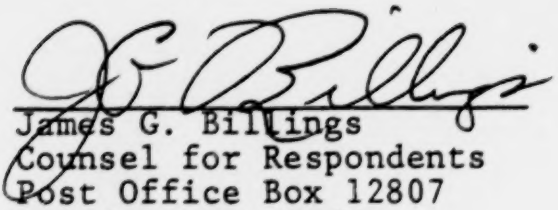
AFFIRMED.

CERTIFICATE OF SERVICE

I, James G. Billings, do hereby certify that in accordance with Rule 28 of the Rules of the Supreme Court I have on this date served three copies of this Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, by causing the same to be deposited in the United States mail, first-class postage prepaid, addressed to the attorney for the petitioners as follows:

Henry L. Anderson, Jr., Esq.
Anderson, Broadfoot, Anderson,
Johnson & Anderson
Post Office Box 474
Fayetteville, North Carolina
28302

This the 31st day of August, 1984.



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